

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

T.C.P No.82/(MAH)/2016
IA No. 17/2016

CORAM:

Present:

SHRI B.S.V. PRAKASH KUMAR
MEMBER (J)

SHRI V. NALLASENAPATHY
MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 31.01.2017

NAME OF THE PARTIES: Cyrus Investments Pvt. Ltd. & Anr.

V/s.

M/s. Tata Sons Limited & Ors.

SECTION OF THE COMPANIES ACT: 241, 242, 244 of the Companies Act,
2013.

S. No.	NAME	DESIGNATION	SIGNATURE
--------	------	-------------	-----------

Dr. Abhishek Manu Singhvi
Mr. Ravi Kadam
Mr. S.N. Mookherjee
Sr. Advs

Mr. Nikhil Sakhardande, Mr. Prateek Sekaria
Mr. Shuva Mandal, Ms. Ruby Singh Ahuja
Mr. Dhruv Dewan, Mr. Nitesh Jain
Mr. Sayak Maity, Ms. Tahira Konejawala
Mr. Anishka Singhvi, Ms. Sameer Pokhary
Mr. Siddhant Sharma, Ms. Rohan Batra
Mr. Arjun Sharma, Mr. Arjun Pall
Ms. Juhi Mathur, Ms. Jeet Kaur
Ms. Royal Chabbra, Ms. Eesha Mohapatra
i/b Shroddul Amarchand Mengaldas
Adv for R 1, 2, 3 & 3

[Handwritten Signature]

Senior Counsel Mr. Rudipto Sarkar
Senior Counsel Mr. Mohan Parasaran, Mr. D.L. Chidarama
Counsel Mr. Zal Anshyayyina, Adv Mr. Ashwin Kumar
Counsel Mr. Shuh Sasdegal
Adv Mr. Jehangir Mistry
Adv Mr. Namrata Parikh as instructed
by M/s Mulla and Mulla and Craigie Blunt & Co
Advocates for Rep Nos. 6, 14, 16 to 22

[Handwritten Signature]

~~Mr. Subodh Desai~~, Mr. Shailesh Paria, Mr. Vishwas Desai i/b
Economic Laws Practice for Respondent Nos. 5 and 7

Mr. Janak Dwarkadas Sr. Counsel
Mr. Sharan Jagtiani Adv
Mr. Kailash Kalyanwalla, Adv
Ms. Shireen Pochkhanwalla Adv.
Mr. Nilesh Barot, Adv
i/b Maneksha & Sethna
Adv for R-11

Shankhwarwalla

Mr. ARYAMA SUNDARAM } Sr. Adv.
MR. MILIND SATHE
MR. SOMASEKHAR SUNDARESAN }
MS. ROHINI MUSA
MR. MOHIT ARORA
MR. RIZBEH MISTRY
MR. ANOJ MENON
MR. GUNJAN SHAH
MR. PARAG SAWANT
MR. AKSHAY DOCTOR
MR. ABISHEK VENKATRAMAN
MR. DHAVAL KOTHARI
Adv for Petitioners
i/b. Desai & Divyani

Adv.-

CP No. 82/241,242,244/NCLT/MB/MAH/2016

Order dictated in the open court

This matter has been posted to today for hearing on main Company Petition in the orders dated 22.12.2017 as well as over the subsequent issue raised in the Affidavits subsequently filed by the parties basing on the directions given in the orders dated 18.1.2017. Pleadings are complete as directed.

2. Today when this Bench has asked the Petitioners Counsel to argue the main Company Petition along with the subsequent issue as mentioned in the order dated 18.1.2017, the Senior Counsel Shri Aryama Sundaram, appearing on the petitioners' behalf, has initially insisted upon this Bench to pass orders in respect to the EGM proposed to be held on 6.2.2017.

3. Looking at the arguments of the petitioner counsel, this Bench has put it to the Counsel of the Petitioners that he had already argued over this interim relief on 16.1.2017 while arguing the Contempt Petition basing on the relief the petitioners sought in the same Contempt Petition, in view of it, this bench has made it clear to the petitioners counsel that this Bench would take a call over holding meeting on 6.2.2017 if the Petitioners side completes their submissions over the main Company Petition as directed in the Order dated 22.12.2016 and on the Affidavits as directed in the order dated 18.1.2017.

4. To which, the Petitioner Counsel has stated that this Bench must decide the waiver plea sought by him in their Affidavit, before hearing main Company Petition. On hearing such submission from the Petitioner Counsel, this Bench again made it clear to the Counsel that this Bench has not prevented the Petitioner side to argue the main Company Petition because this Bench held in the Order dated 22.12.2016 that maintainability point raised by the Respondents would be taken up as 1st point while the Respondents side argues on main petition. Since it is not open to the

Respondents' side Counsel to argue this maintainability point separately and before completion of the submissions of the Petitioner side, the parties being bound by the earlier orders, the Counsel appearing on behalf of the respective parties shall go in accordance with the orders already passed.

5. But the Petitioner Counsel, despite this Bench directed the petitioners counsel to argue as directed, has submitted four judgements of the Hon'ble Supreme Court saying that maintainability point shall be decided before hearing the main Company Petition, therefore unless and until waiver relief sought by the Petitioner is not decided, the Petitioner side cannot argue the main Company Petition.

6. The four judgements the petitioners counsel relied upon are (1) **Jagraj Singh v/s. Birpal Kaur 2007(2) SCC 564 / 27;** (2) **Sri Athmanathaswami Devasthanam v/s. K. Giopalaswami Ayyangar 1964 (3) SCR 763 Para 14;** (3) **Narendra S. Chavan v/s. Vaishali V. Bhadekar 2009 (15) SCC 166 para 5 & 6** and (4) **T. K. Lathika v/s. Seth Karandas Jamnadas 1999 (6) SCC 632 para 9.**

7. It is pertinent to mention that none of the judgements are either in relation to the proceeding u/s 397-398 of the Companies Act, 1956 or u/s 241-242 of Companies Act, 2013. For the Petitioner Counsel has not explained facts of any of the cases supra to say that the facts of the given case are similar to facts of any of the cases supra, the said ratio is not applicable in this case. Orders by courts will be passed basing on the facts of the respective case, whether ratio in one case is applicable to another case will always dependent on the facts of each case. Moreover, normally maintainability ground will be taken by the Respondent side and they will come up saying petition shall not be taken up for hearing unless maintainability point is decided, here, the position is otherwise,

8. The Petitioner side is insisting upon this Bench, to decide waiver point and the maintainability point, despite opportunity is given to them to argue the main Petition. The Petitioner Counsel, while this Bench passing this Order, again stated

that unless a ruling is given on the waiver of application, the main Company Petition cannot be argued.

9. If at all this Bench asked the Petitioners side to argue on the waiver of Application and maintainability of the Petition before hearing main petition, then the question of hearing on waiver would arise. No such objection has either been raised by this Bench or from the Respondents' side.

10. In this case, this Tribunal, in order to decide the matter as early as possible, on 22.12.2017, directed both the parties to argue on the maintainability as well as on the main Company Petition so that the maintainability issue can be decided as one of the issues in the main Company Petition.

11. It is settled proposition of law that a party can raise maintainability at any point of time, therefore, it is the discretion of the Court to decide whether the maintainability point is to be decided at threshold or along with the main Company Petition. So when this Bench, itself is interested to hear the main company petition, this Bench is virtually perplexed of seeing the Petitioner Counsel stating that they will not argue the main Company Petition unless the waiver plea under proviso to Section 244 of the Companies Act 2013 is decided.

12. The Petitioner Counsel has mentioned para 25 of the order dated 18.1.2017 to say that this Bench by invoking inherent powers gave direction for completion of pleadings in respect to the EGM scheduled to be held on 6.2.2017 over an agenda for removal of R11 from the Board of R1, therefore interim relief over it shall be decided before hearing main petition.

13. To give wholesome meaning to the order passed by this Bench, this Bench believes that it is pertinent to mention para 24-26 of the order dated 18.1.2017, which goes as below:

“24. The Petitioners happened to raise a point in the Contempt Petition that the Board of Directors convening to hold EGM on 6.2.2017 of removal of R11 from the Directorship he has been holding. Over this aspect, the Petitioners and R11 has liberty to raise that point before NCLT, thereby notwithstanding whether the procedure followed in proposing for his removal as a Director in Shareholders meeting leaving it open to exercise the democratic rights of the Shareholders, this Bench does not and will not want to curtail the liberty conferred upon them by the statute.

25. Though it is not a point to be taken up in a Contempt Application, having the Petitioners already mentioned and brought it to this Bench notice, this Bench, invoking the inherent powers endowed upon this Bench under Rule 11 analogous to powers under section 151 of CPC, the Petitioners and R11 are given liberty to file an Affidavit limiting it to the proposal for removal of R11 from the Board within three days from the day this order made available to the parties and then the answering Respondents to file reply within three days from thereof and rejoinder if any three days from the date of filing reply affidavit, so that this Bench could hear this issue along with other issues of main company Petition.

26. List this matter as fixed earlier for hearing main Company petition and the Affidavits ordered to be filed.”

14. On reading para 24,25 and 26 of the order above, it appears that though the Petitioner vehemently argued over this interim relief on EGM to be held on 6.2.2017 without any separate application, this bench having felt that this issue must be taken into consideration while hearing the main Company Petition, it has been held that the petitioners and R11 is given liberty to bring in this subsequent issue as part of hearing to main petition, accordingly directed to file Affidavits for hearing subsequent issue at the time of main hearing. But, this Bench, despite the petitioners' counsel argued for stay of EGM dated 6.2.2017, has not granted any stay over the submissions made in respect to holding EGM on 6.2.2017.

15. It is a settled proposition of law when a relief is sought, if such relief is not granted in the order passed, it has to be construed that relief has been refused by the Bench. So once any relief is refused to any party, it is open to the party either to file an Appeal or to remain bound by the orders passed by the Bench. Here, the Petitioner side, neither filed any appeal against the order dated 22.12.2016 nor any appeal over the order dated 18.1.2017, therefore, the parties appearing in this case are bound by the orders dated 22.12.2016 and 18.01.2017. Since this Bench has posted this issue of proposal for removal of R11 to be heard along with the main Company Petition in the order 18.1.2017, it is not open to the Petitioner Counsel to again make submissions for interim relief on the same issue or to insist upon this bench to decide the maintainability of the Application or waiver of application before hearing the main Company Petition.

16. Since in both the orders, it has been made clear that this case is posted to today for hearing the main Company Petition, the Petitioner side is supposed to argue on the main company petition and the subsequent Affidavits as well. We regret to mention that the Petitioner Counsel, instead of arguing on the main Petition, has been insisting upon this Bench to pass an order at least on the waiver application pending before this Bench.

17. With these observations in pursuance of the order dated 22.12.2016 and 18.1.2017, the Petitioner Counsel is again directed to argue today at 2.30 p.m. on the main company petition and the affidavits subsequently come on record as directed earlier.

18. The aforesaid order was passed before lunch giving direction to the Petitioner Counsel to argue on the main company petition after recording everything that has today happened in the Court Hall.

19. After lunch hour, the Petitioner Counsel has again said he cannot argue on the main petition unless orders are passed on the point of waiver and stay over the

EGM to be held on 6.2.2017. The petitioner counsel, while this Bench dictating order, said "he cannot argue", "he is not saying he will not argue."

20. It does not matter whether it is "cannot" or "will not", the content of the submission of the petitioners' counsel is clear refusal to make submissions on main petition as directed by this Bench. While this Bench giving dictation, the Petitioner counsel has again raised and said that he is only asking for adjournment. Whether he asks this Bench to decide other reliefs mentioned above or for adjournment, the result is he is today not ready and willing to argue main petition along with other points as held in the orders dated 22.12.2016 and 18.1.2017.

21. It is not that this Bench has asked the Petitioner counsel to take up this gauntlet all of a sudden, the road map is already laid out on 22.2.2016, thereafter on 18.1.2017, there was time in between 22.12.2016 and today and also there was time in between 18.1.2017 and today, but the Petitioner side has not appealed on any of these orders.

22. The argument of the Petitioner Counsel as well as R11 Counsel is that this Bench has not dealt with the interim relief seeking stay on EGM to be held on 6.2.2017 in the order dated 18.1.2017. But by reading the order dated 18.1.2017, it is obvious that this Bench has dealt with the interim relief, then only given direction to file Affidavit to put forth his case in respect to subsequent issue before this Bench, so that issue could be finally decided at the hearing of main petition.

23. Therefore, the arguments of the Petitioner Counsel and R11 Counsel saying that this issue has not been dealt with is unmeritorious. If at all any issue has already been dealt with in the previous order, it is not open to the parties seeking the same relief subsequently.

24. When it has been directly put to the party to argue the matter, if the counsel insisted for the adjournment, it is nothing but refusal to make submissions as

directed by this Bench. If any party refuses to proceed with the matter as directed earlier, we believe, it is nothing but disobedience to the orders already passed by this Bench.

25. Though we believe it is disobedience to the order passed by this Bench, we, by restraining ourselves from proceeding any further on the happenings taken place in the open Court, posts this matter on 13.2.2017 hoping that these Petitioners would argue on the next date of hearing, failing which this CP will stand dismissed. The hearing date of tomorrow is hereby cancelled.

26. List this matter on 13.2.2017 and 14.2.2017 for completion of the petitioners' side submissions and on 20.2.2017 and 21.2.2017 for completion of the submissions of the Respondents side.

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)